

## **CHAPTER 12.24**

### **Privilege to Use Public Rights-of-Way**

#### **12.24.010 Legislative intent.**

The City Council does hereby find, determine and declare:

A Using easements and rights-of-way granted by the City involves the use, availability and potential use of City personnel and facilities and creates the potential for hazards and may require standby and active service by fire, police and other local safety agencies, as well as the Public Works Department, and are matters of local and municipal concern.

B. That the nature of demands placed on the municipality with the use of public easements, streets and rights-of-way, and the potential and actual hazards from the operations of such use has a substantial effect upon the health, safety and welfare of the citizens of the City and upon the expenditures to be budgeted by the City.

C. That the use of the streets, alleys and public rights-of-way located within the City is a valuable special privilege not provided to the public generally and for which the City is entitled to consideration in the form of rental fees. (Ord. 269-04)

#### **12.24.020 Rental fee.**

A rental fee for occupying and using City right-of-way shall be required by the City and paid by the user of such right-of-way calculated to be ten cents (\$0.10) per lineal foot per month of right-of-way occupied. (Ord. 269-04)

#### **12.24.030 Time of payment of fee.**

The rental fee levied by this Chapter shall accrue against each and every user of public right-of-way and shall be payable in quarterly installments. Such installments shall be paid no later than the tenth day after the end of each quarter. Any quarterly installment not paid on or before said date shall be considered delinquent. (Ord. 269-04)

#### **12.24.040 Interest on deficiency.**

Interest on any deficiency in payment of this rental fee shall accrue at the rate of ten percent (10%) per annum. (Ord. 269-04)

#### **12.24.050 Failure to pay.**

If any user subject to the provisions of this Chapter shall fail to pay the rental fees as herein provided, the full amount thereof plus costs of collection, including reasonable attorney fees, shall be due and collected from such user; and the same, together with an additional ten percent (10%) of the amount of rental fees due, shall be and hereby is declared to be a debt due and owing from such user to the City. The computation of said ten percent (10%) shall be in addition to interest on the deficiency as set forth in this Section. The City Attorney, upon direction of the City Council, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect said debt. (Ord. 269-04)

#### **12.24.060 Administrative hearings.**

Any user subject to the provisions of this Chapter may request a hearing on the levy of the rental fees after receiving a notice of final determination, assessment, demand for payment, or denial of claim for refund. Such hearing shall be conducted in the manner prescribed hereinafter:

A. If a user disputes the reasonableness or applicability of the rental fee, it may seek review of the assessment by filing a protest with the City Treasurer within thirty (30) days of the mailing of the accounting statement. If such a protest is filed, the user shall appear before the City Treasurer at a date specified. The user shall be notified of this hearing date by certified mail, return receipt requested. At this hearing, the user may present evidence regarding the reasonableness or applicability of the rental fee. The user shall bear the burden of proof.

B. Said hearing shall be solely for the purpose of hearing protests as to the reasonableness and applicability of the rental fee as calculated for that specific user.

C. At said hearing, the City Treasurer shall have all powers necessary to ensure the fair and efficient conduct of the hearing, but shall not be bound by the Colorado Rules of Evidence. The hearing shall be open to the public.

D. Within sixty (60) days of such hearing, the City Treasurer shall make such order in the matter as he or she deems just and proper and shall furnish a copy of such final order to the protestant and the City Manager. (Ord. 269-04)

#### **12.24.070 Administration of rental fee.**

The City Treasurer shall administer the provisions of this Article. The City Manager may promulgate rules or regulations to aid in the enforcement and administration of this Chapter, pursuant to the provisions of this Code. (Ord. 269-04)

#### **12.24.080 Local purpose.**

It is expressly understood that none of the terms of this Chapter shall be construed to mean that any user subject to this rental fee is granted a franchise by the City. However, if a franchise is granted by the City Council, the provisions of this Chapter shall not apply insofar as it concerns items specifically addressed by the Franchise Agreement. (Ord. 269-04)

#### **12.24.090 Reimbursement of costs.**

Any entity challenging the validity, legality, applicability or constitutionality of this Chapter, or the rents levied, if unsuccessful, will reimburse the City for all costs incurred, including attorneys' fees, in such litigation. (Ord. 269-04)

#### **12.24.100 Violation – penalty.**

A person who violates the requirements of this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment of not more than one (1) year, or by both such fine and imprisonment. (Ord. 269-04)